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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

August 15, 2000

Ex Parte

Magalie R. Salas, Secretary
Federal Communications Commission
445 – 12th Street, SW
Washington, D.C. 20554

Re: **Written *Ex Parte* Statement of Intermedia Communications Inc. and Net2000 Communications Services, Inc. in CC Docket No. 96-98:**

ILEC Failures to Provision EELs On a Reasonable and Timely Basis Must Be Factored Into Any "Impair" Analysis Relating to the Elimination of the Local Switching Unbundled Network Element

Dear Ms. Salas:

Pursuant to § 1.1206(b)(1) of the Commission's Rules, and by their undersigned counsel, Intermedia Communications Inc. ("Intermedia") and Net2000 Communications Services, Inc. ("Net2000") jointly submit this written *ex parte* presentation regarding the availability of the enhanced extended link ("EEL"), and its relation to the removal of the Local Switching Unbundled Network Element ("UNE"). In accordance with Section 1.1206(b)(1) of the Commission's rules, two copies of this *ex parte* are being submitted to you under separate cover for inclusion in CC Docket No. 96-98.

Intermedia is a competitive local exchange carrier ("CLEC"), based in Tampa, Florida. A provider of both voice and data services, Intermedia is the largest independent CLEC in the United States. Net2000 is a relatively new entrant into local markets, and provides a full portfolio of local and long-distance voice and data services to customers throughout the Northeast. Both Intermedia and Net2000 have participated actively in CC Docket No. 96-98, and have been strong proponents of the EEL since the concept was developed. As discussed below,

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even though the Commission has mandated that the EEL be available as of February 17 of this year, EELs are still not generally available. In order to provide an incentive for ILECs to deploy EELs as required, and to ensure that they cannot benefit from unreasonably delaying EEL provisioning, the Commission should expressly consider the availability *vel non* of EELs in any analysis that may be used as a basis for eliminating other UNEs.

I. BACKGROUND

In its *UNE Remand Order*,¹ the Commission established the right of CLECs to obtain “enhanced extended links” (“EELs”), which are combinations of unbundled loop and/or transport network elements. The Commission finds its authority to mandate EELs in § 51.315(b) of the Commission’s rules, which precludes incumbent LECs from separating unbundled network elements that are currently combined. The Commission noted that incumbent LECs routinely provide the functional equivalent of combinations of unbundled loop and transport network elements through their special access offerings, and that a requesting carrier that ordered special access service from the ILEC could subsequently convert that circuit to its UNE equivalent – the EEL.² The portion of the *UNE Remand Order* that made EELs available to requesting carriers took effect on February 17, 2000.³

In the same *UNE Remand Order*, the Commission established rules governing the availability of the unbundled local circuit switching UNE, and UNE combinations employing that element. The Commission concluded that, in some limited circumstances, the local

¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (“*UNE Remand Order*,” so called because it responded to the Supreme Court’s remand of the Commission’s *First Report and Order* in CC Docket No. 96-98, see *AT&T v. Iowa Utils. Bd.*, 119 S.Ct. 721 (1999)).

² *UNE Remand Order*, 15 FCC Rcd at 3909. In order to provide ILECs with protection from substantial erosion of their special access service revenues, the Commission placed a usage restrictions on EELs, requiring that requesting carriers that obtain EELs must carry a “significant amount” of local traffic over them. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order, FCC 99-370 (rel. Nov. 24, 1999).

³ Most provisions of the *UNE Remand Order* took effect 30 days after Federal Register publication of the Order. Publication occurred on January 18, 2000, and so the EEL provisions of the *UNE Remand Order* took effect on February 17, 2000.

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switching UNE would not meet the “impair” test mandated by the Communications Act, in which case ILECs would not be required to make it available. Among the four factors that the Commission identified in this “impair” analysis was “cost-based access to the enhanced extended link (EEL) throughout density zone 1.”⁴

Intermedia and Net2000 file this ex parte statement to request that the Commission clarify and further define the duty of ILECs to provide “access” to EELs, and to expressly incorporate this definition in the “impair” analysis it will conduct in determining whether ILECs do not need to make the local switching UNE available. As discussed below, both Intermedia and Net2000 have experienced significant delays in the provisioning of EELs, and this recent experience demonstrates the need for a more detailed statement of the role that EEL availability will take in the Commission’s “impair” analysis.

II. INTERMEDIA AND NET2000 HAVE BEEN DENIED

REASONABLE ACCESS TO EELs

Intermedia actively participated in negotiations with a number of ILECs, including BellSouth, in crafting a definition of “significant amount of local traffic” that could meet the needs of the industry. These negotiations ultimately resulted in a joint proposal signed by several CLECs and ILECs – including Intermedia and BellSouth – that was filed with the Commission on February 28, 2000. The Commission ultimately adopted the bulk of the recommendations that were made in this jointly filed letter.

Despite the joint involvement of Intermedia and BellSouth in crafting this compromise position, when it came time for Intermedia to request EELs from BellSouth, BellSouth refused to process orders for converting existing special access circuits to EELs. Instead, BellSouth required that Intermedia sign an amendment to the currently effective Intermedia/BellSouth interconnection agreement. While Intermedia expressed its willingness to do so, the amendment proposed by BellSouth contained terms that were inconsistent with the terms that both parties had negotiated, and proposed in their joint letter to the Commission. The terms that BellSouth insisted upon were highly burdensome to Intermedia, and completely unacceptable.

BellSouth ultimately agreed to draft an amendment consistent with the terms negotiated by the parties, and reflected in the joint letter to the Commission, and Intermedia promptly signed such an amendment. However, the delay caused by this unnecessary and unreasonable debate over amendment language delayed Intermedia’s ability to order EELs by 4 months.

⁴ *UNE Remand Order*, 15 FCC Rcd at 3823.

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Net2000 similarly has been frustrated in its ability to obtain timely EELs, in this case from Verizon. Specifically, Verizon has contested Net2000's right to convert to EELs special access circuits that Net2000 has had in place for some time. Verizon bases its objection on the grounds that Net2000 had previously obtained the special access circuits from Bell Atlantic as part of a "ratcheted" service, in which Bell Atlantic provisioned switched circuit traffic over the same facility used to provision Net2000's special access circuit.

Net2000 has recently filed a request for Informal Intervention with the Commission's Enforcement Division, in an attempt to obtain a prompt resolution of this matter. In the request, Net2000 explains that Bell Atlantic's previous agreement to provide "ratcheted" special and switched access services over the same facility has no bearing on Net2000's ability to convert the circuit to an EEL. Indeed, Net2000 demonstrates that the circuits are fully compliant with the use restrictions established by the Commission. Rather than repeat its arguments here, Net2000 appends to this *ex parte* filing a copy of its filed request for Informal Intervention.

III. RELIEF REQUESTED

As the experiences of Intermedia and Net2000 demonstrate, ILECs retain the ability and incentive to delay provisioning of EELs in order to disadvantage their competitors. Moreover, even if delays in EEL provisioning are caused purely by innocent delays in provisioning or legitimate disagreements over the Commission's rules, delay in EEL provisioning means that CLECs are denied the benefits of UNEs that are critical to their ability to provide competitive local service in a timely and cost-effective manner.

Because any delay in EEL provisioning disadvantages CLECs – and because recent experience has shown that EELs are not readily available, even six months after the Commission has ordered ILECs to provide them, Intermedia and Net2000 believe it necessary for the Commission to make explicit that EEL availability will be included in any "impair" analysis that may result in the elimination of local circuit switching or any other UNE. Specifically, the Commission should find that an ILEC cannot meet the "impair" test for retiring local switching or other UNEs unless it demonstrates that EELs are readily available as an alternative means of providing competitive local service. Intermedia and Net2000 urge the Commission to adopt the following language:

An ILEC cannot demonstrate that requesting carriers will not be impaired in their ability to provide competitive local service without access to local switching or other UNEs if EELs are not available in a timely and efficient manner within the same geographic area. EELs will not be considered "available" if there are pending requests for converting special access circuits

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to EELs that remain pending more than 15 calendar days after the requested conversion date.

Intermedia and Net2000 believe that such a standard will provide adequate incentive for ILECs to provision EELs responsibly, and will ensure competitive carriers with an effective means of providing competitive local service, even if other UNEs are removed.

IV. CONCLUSION

For the reasons discussed above, Intermedia and Net2000 request that the Commission clarify the application of its "impair" analysis to include express terms for EEL conversion.

Pursuant to 1.1206(b)(1), an original and one copy of this written *ex parte* notification is submitted for inclusion in the public record of the above-referenced proceeding. Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,



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